

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ALFREDO C. MICHEL, Register No. 1005390,)
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 Plaintiff,)
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 v.) No. 08-4074-CV-C-SOW
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DAVID DORMIRE, et al.,)
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)
 Defendants.)

ORDER

On June 3, 2008, United States Magistrate Judge William A. Knox recommended that the motion of defendants Hardman and Baker to dismiss for failure to exhaust administrative remedies be granted. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). No exceptions have been filed.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted. Plaintiff has not exhausted his administrative remedies regarding the claims in his complaint. Further, because plaintiff's claims against defendant Dormire involve the same unexhausted claims as those against defendants Hardman and Baker, defendant Dormire's motion to dismiss for failure to exhaust is also granted.

Plaintiff's motions for leave to amend his claims from state malpractice to deliberate indifference, to see an independent doctor, and for discovery are denied as moot. Defendants' motions to stay discovery are also moot.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of June 3, 2008, is adopted. [34] It is further

ORDERED that defendants' motions to dismiss for failure to exhaust administrative remedies, pursuant to 42 U.S.C. § 1997e, are granted and plaintiff's claims are dismissed, without prejudice. [12, 42] It is further

ORDERED that defendants' motions to stay discovery and plaintiff's motions for leave to amend, to see an independent doctor and for discovery are denied as moot. [35, 37, 52, 54, 55]

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: July 3, 2008